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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/702,093	10/30/2000	Alison Salyer Bagwell	15260	7880

23556 7590 09/15/2003

KIMBERLY-CLARK WORLDWIDE, INC.  
401 NORTH LAKE STREET  
NEENAH, WI 54956

EXAMINER

ART UNIT	PAPER NUMBER
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22

DATE MAILED: 09/15/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

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<b>Notification of Non-Compliance With 37 CFR 1.192(c)</b>	Application No. 09/702,093	Applicant(s) BAGWELL ET AL.	
	Examiner Judy M. Reddick	Art Unit 1713	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

The Appeal Brief filed on 30 June 2003 is defective for failure to comply with one or more provisions of 37 CFR 1.192(c). See MPEP § 1206.

To avoid dismissal of the appeal, applicant must file IN TRIPLICATE a complete new brief in compliance with 37 CFR 1.192(c) within the longest of any of the following three **TIME PERIODS**: (1) **ONE MONTH or THIRTY DAYS** from the mailing date of this Notification, whichever is longer; (2) **TWO MONTHS** from the date of the notice of appeal; or (3) within the period for reply to the action from which this appeal was taken. **EXTENSIONS OF THESE TIME PERIODS MAY BE GRANTED UNDER 37 CFR 1.136.**

1. ☐ The brief does not contain the items required under 37 CFR 1.192(c), or the items are not under the proper heading or in the proper order.
2. ☐ The brief does not contain a statement of the status of all claims, pending or cancelled, or does not identify the appealed claims (37 CFR 1.192(c)(3)).
3. ☐ At least one amendment has been filed subsequent to the final rejection, and the brief does not contain a statement of the status of each such amendment (37 CFR 1.192(c)(4)).
4. ☐ The brief does not contain a concise explanation of the claimed invention, referring to the specification by page and line number and to the drawing, if any, by reference characters (37 CFR 1.192(c)(5)).
5. ☐ The brief does not contain a concise statement of the issues presented for review (37 CFR 1.192(c)(6)).
6. ☐ A single ground of rejection has been applied to two or more claims in this application, and
  - (a) ☐ the brief omits the statement required by 37 CFR 1.192(c)(7) that one or more claims do not stand or fall together, yet presents arguments in support thereof in the argument section of the brief.
  - (b) ☐ the brief includes the statement required by 37 CFR 1.192(c)(7) that one or more claims do not stand or fall together, yet does not present arguments in support thereof in the argument section of the brief.
7. ☐ The brief does not present an argument under a separate heading for each issue on appeal (37 CFR 1.192(c)(8)).
8. ☐ The brief does not contain a correct copy of the appealed claims as an appendix thereto (37 CFR 1.192(c)(9)).
9. ☒ Other (including any explanation in support of the above items):

Appellant's brief presents arguments relating to whether narrowing of claims through the use of the term "consisting essentially of" raises issues that would require further consideration and/or search. This issue relates to petitionable subject matter under 37 CFR 1.181 and not to appealable subject matter. See MPEP § 1002 and § 1201.

*Judy M. Reddick*  
Judy M. Reddick  
Primary Examiner  
Art Unit: 1713

¶ 12.54 *Issues*

(6) *Issues*

**Examiner Note**

Follow this form paragraph with form paragraphs 12.54.01, 12.54.02, or 12.54.03.

¶ 12.54.01 *Agreement With Appellant's Statement of the Issues*

The appellant's statement of the issues in the brief is correct.

¶ 12.54.02 *Disagreement With Appellant's Statement of the Issues*

The appellant's statement of the issues in the brief is substantially correct. The changes are as follows: [ 1 ]

**Examiner Note**

In bracket 1, explain the changes with respect to the appellant's statement of the issues in the brief including:

¶ 12.54.03 *Non-Appealable Issue in Brief*

Appellant's brief presents arguments relating to [1]. This issue relates to petitionable subject matter under 37 CFR 1.181 and not to appealable subject matter. See MPEP § 1002 and § 1201.

¶ 12.55 *Grouping of Claims*

(7) *Grouping of Claims*

**Examiner Note**

Follow this form paragraph with either form paragraph 12.55.01, 12.55.02 or 12.55.04 for each grouping of claims (i.e., each ground of rejection which appellant contests).

¶ 12.55.01 *No Statement and Reasons in Brief That Claims Do Not Stand or Fall Together*

The rejection of claims [1] stand or fall together because appellant's brief does not include a statement that this grouping of claims does not stand or fall together and reasons in support thereof. See 37 CFR 1.192(c)(7).

**Examiner Note**

1.

Use this form paragraph for each grouping of claims (i.e., ground of rejection which appellant contests) wherein the brief includes neither a statement that a grouping of claims does not stand or fall together nor reasons in support thereof.

2.

If the brief includes a statement that a grouping of claims does not stand or fall together but does not provide reasons, as set forth in 37 CFR 1.192(c)(7), notify appellant of the non-compliance using form paragraphs 12.69, 12.69.01 and 12.78.

¶ 12.55.02 *No Agreement With Brief Why Claims Do Not Stand or Fall Together*

The appellant's statement in the brief that certain claims do not stand or fall together is not agreed with because [1].

**Examiner Note**

In bracket 1, explain why the claim grouping listed in the brief is not agreed with by the examiner and why, if appropriate, e.g., the claims as listed by the appellant are not

separately patentable.

¶ 12.55.04 *Brief Gives Reasons Why Claims Do Not Stand or Fall Together*

Appellant's brief includes a statement that claims [ 1 ] do not stand or fall together and provides reasons as set forth in 37 CFR 1.192(c)(7) and (c)(8).

¶ 12.56 *Claims Appealed*

(8) *Claims Appealed*

**Examiner Note**

Follow this form paragraph with form paragraph 12.56.01, 12.56.02 or 12.56.03.

¶ 12.56.01 *Copy of the Appealed Claims in Appendix Is Correct*

The copy of the appealed claims contained in the Appendix to the brief is correct.

¶ 12.56.02 *Copy of the Appealed Claims in Appendix Is Substantially Correct*

A substantially correct copy of appealed claim [ 1 ] appears on page [ 2 ] of the Appendix to the appellant's brief. The minor errors are as follows: [ 3 ]

**Examiner Note**

1.  
In bracket 1, indicate the claim or claims with small errors.

2.  
In bracket 3, indicate the nature of the errors.

¶ 12.56.03 *Copy of the Appealed Claims in Appendix Contain Substantial Errors*

Claim [ 1 ] contain(s) substantial errors as presented in the Appendix to the brief. Accordingly, claim [ 2 ] correctly written in the Examiner's Answer.

**Examiner Note**

1.  
Appellant should include a correct copy of all appealed claims in the Appendix to the brief. See 37 CFR 1.192(c)(9).

2.  
Attach a correct copy of any incorrect claims as an Appendix to the Examiner's Answer and draw a diagonal line in pencil through the incorrect claim in the Appendix of the appellant's appeal brief.

3.  
Rather than using this form paragraph, if the errors in the claim(s) are significant, appellant should be required to submit a corrected brief using form paragraphs 12.69, 12.77 and 12.78, as well as any other paragraphs 12.70 to 12.76 as may be appropriate. Where the brief includes arguments directed toward the errors, a corrected brief should always be required.

¶ 12.57 *Prior Art of Record*

(9) *Prior Art of Record*

**Examiner Note**

Follow this form paragraph with either form paragraph 12.57.01 or 12.57.02.

¶ 12.57.01 *No Prior Art Relied Upon*

No prior art is relied upon by the examiner in the rejection of the claims under appeal.

## 1201 Introduction

The United States Patent and Trademark Office (Office) in administering the Patent Laws makes many decisions of a discretionary nature which the applicant may feel deny him or her the patent protection to which he or she is entitled. The differences of opinion on such matters can be justly resolved only by prescribing and following judicial procedures. Where the differences of opinion concern the denial of patent claims because of prior art or material deficiencies in the disclosure set forth in the application, the questions thereby raised are said to relate to the merits, and appeal procedure within the Office and to the courts has long been provided by statute.

The line of demarcation between appealable matters for the Board of Patent Appeals and Interferences (Board) and petitionable matters for the Commissioner of Patents and Trademarks should be carefully observed. The Board will not ordinarily hear a question which it believes should be decided by the Commissioner, and the Commissioner will not ordinarily entertain a petition where the question presented is an appealable matter. However, since 37 CFR 1.181(f) states that any petition not filed within 2 months from the action complained of may be dismissed as untimely and since 37 CFR 1.144 states that petitions from restriction requirements must be filed no later than appeal, petitionable matters will rarely be present in a case by the time it is before the Board for a decision. *In re Watkinson*, 900 F.2d 230, 14 USPQ2d 1407 (Fed. Cir. 1990).